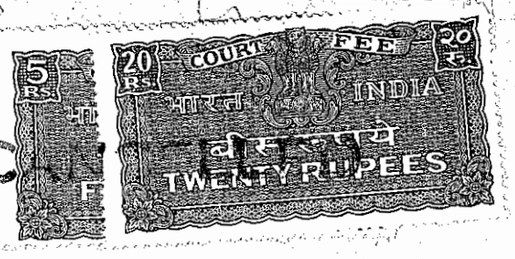

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IN THE HIGH COURT OF M.P., JABALPUR.

Writ Petition No. 279 /1995

The Food Corporation of India
through its Sr. Regional Manager,
Chetak Building, M.P. Nagar,
Bhopal. Petitioner

Vs.

1. The Regional Labour Commissioner(C),
10, Civic Centre, Marhatal,
Jabalpur (M.P.)

2. The Durg Zilla Hammal Mazdoor Sangh,
through its president Shri S.N. Sadhu,
Supela Bazar, Bhilai (M.P.)

3. Smt. Shanti Bai W/o Shri Shambu Patel.

4. Smt. Kuleshwaribai w/o Kartikram Sahu

5. Hatyarinbai w/o Kaluwa Satnami

6. ~~Budhwantibai w/o Pahatiya Satnami~~

7. Jankibai w/o Guju Satnami

8. Bhagwani bai w/o Jhaburam Nai

9. Janki bai w/o Umar Mahato

10. Kunti bai w/o Biran Singh

11. Bisaihain bai w/o chain Singh Nirmalkar

12. Girija bai w/o Kishanram

13. Narayan Prasad s/o shyamratan Umre

14. Birbal s/o shivanandan Yadav

15. Anand Kumar s/o Mayaram Yadav

16. Hakim Khan s/o Sardar Khan

17. Sabir Ali s/o Abbas Ali

18. Punau Ram s/o Rameshwar Ram verma

19. Narendra Kumar s/o Shyamratan Umre

20. ~~Deraha Ram s/o Pusauram Gond~~

21. Rajkumar s/o Sudalkardas Satnami

22. Bishambar Lal s/o Kishan Satnami

23. Kumar s/o Sahadev Adivasi

24. Brij Bai w/o Sahadev Adivasi, All c/o Respondent No. 2 BHILAI

25. Collector Durg

Respondents.

IN THE HIGH COURT OF M.P., JABALPUR.

Writ Petition No. 279 /1995

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th
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1.

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3.

Amended vide Court's order dt. 18-06-2001

Advocate
For Applicants

Tirath Bai adopted daughter of Budhuwatan Bai .

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Amended vide Court's order dt. 18-06-2001

Advocate
For Applicants

(i) Kumari Bai Widow of Darharam aged about 35 years,

(ii) Sagar S/o Darharam aged about 13 years,

(iii) Puranik S/o Darharam aged about 5 years, No. (ii) & (iii) both minor through Natural gardian mother Kumari Bai,

(iv) Suraj Bai W/o Pusau Ram aged about 70 years,

All R/o Hut adjecent to eastern wall of food Corporation of India, Durg (C.G.)

PETITION UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF CERTEORARI MANDAMUS PROHIBITION AND FOR APPROPRIATE DIRECTIONS.

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM : **Hon'ble Shri A.K. Patnaik, CJ**
& Hon'ble Shri Satish K. Agnihotri, J.

WRIT PETITION NO.279 OF 1995

ORDER FOR CONSIDERATION

Sd/-
Satish K. Agnihotri
Judge
26/09/2005

HON'BLE SHRI A.K. PATNAIK, CJ.

I agree.

Sd/-
Chief Justice

POST IT FOR 29 **/09/2005.**

Sd/-

28/09/2005

AFR

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM : **Hon'ble Shri A.K. Patnaik, CJ**
& Hon'ble Shri Satish K. Agnihotri, J.

WRIT PETITION NO.279 OF 1995

The Food Corporation of India

Versus

The Regional Labour Commissioner (C) and others

Present: Mr. R.K. Gupta, Sr. Advocate with Mr. B.P. Gupta, Advocate for the petitioner.

Mr. H.B. Agrawal, Sr. Advocate with Miss Shipra Biswas, Advocate for respondents 2 to 24.

Mr. P.S. Koshy, Advocate for the intervener.

ORDER
(Passed on 29th of September, 2005)

The following Order of the Court was passed by

Satish K. Agnihotri, J: -

The present writ petition filed under Article 226/227 of the Constitution of India impugns the orders dated 05.10.1994 & 14.12.1994 (Annexure P-1 & P-2), passed by the Regional Labour Commissioner (C), Jabalpur in case No.J.2 (14)/93-I.R.II and letter No.J.2(14)/93.I.R.II., dated 22.12.1994 (Annexure-P-33)sent by the Regional Labour Commissioner (C), Jabalpur to the Collector, Durg.

(2). The undisputed facts in brief are that the respondents 3 to 24 - workmen were working with the petitioner at Durg. The services of the respondents 3 to 24 - workmen were discontinued from 09.11.1984 as

according to the petitioner M/s Shahi Transport, Durg was engaged as contractor for the work and M/s Shahi Transport declined to engage respondents 3 to 24 for the work which they were performing earlier. Respondents - workmen raised a dispute before the Government of India and on failure of the conciliation, the Government of India vide Notification dated 26.04.1985 referred the mater to the Central Government Industrial Tribunal – cum- Labour Court, (for short "CGIT"), Jabalpur for adjudication on the following issue :-

> " Whether the action of the management of FCI in relation to their Regional Manager, FCI, Bhopal in not regularizing the 25 workers mentioned in the annexure below, with effect from 1-12-1983 is justified? If not, to what relief the workmen concerned are entitled? "

The Presiding Officer, CGIT vide award dated 25.05.1986 has held as under :

> **"Para -15 :** - In view of the above discussion I hold and answer the reference as under :
>
> (a) That the action of the management of the Food Corporation of India in relation to their Regional Manager, FCI, Bhopal in not regularizing the 25 workers mentioned in the annexure to the reference to order with effect from 1.12.1983 is not justified. Consequently they are entitled to be reinstated and regularized as departmental workmen from 1.12.1983.
>
> (b) They are further entitled to the following :
>
> (i) From 1.12.1983 to 9.11.1984 difference of wages between temporary workers and the departmental workers will all the ancillary reliefs.
>
> (ii) From 10.11.1984 till they are reinstated a regularized full back wages with all the ancillary reliefs.

(iii) This should be done within three months of the publication of the award failing which they will be entitled to interest @ 9% from the date of default till the above amount is paid. Food Corporation of India will further pay costs of Rs.1000/- to the workmen."

(3). The petitioner filed a petition under Article 226 of the Constitution of India in the High Court of Madhya Pradesh, at Jabalpur against the award dated 25.05.1986 and the same was numbered as M.P. No.3275 of 1986. The Division Bench of the High Court of Madhya Pradesh, Jabalpur by its order dated 23.03.1993 allowed the said petition partly maintaining the directions made in the award of CGIT including the direction that the workmen were entitled to the regularization, but the direction for payment of difference of wages from 01.12.1983 to 09.11.1984 was quashed. The petitioner preferred a Special Leave Petition (Civil) being S.L.P.(C) No.12362 of 1993 against the order dated 23.03.1993 of the High Court of Madhya Pradesh, Jabalpur in M.P. No.3275 of 1986. The said Special Leave Petition (Civil) was dismissed. Thereafter, the review petition filed against the order passed in the Special Leave Petition (Civil) was also dismissed on 03.11.1993.

(4). The petitioner, pursuant to the order passed by the High Court of Madhya Pradesh, Jabalpur, passed an order dated 25.01.1994 (Annexure-P-6) reinstating the respondents - workmen in their original post as ancillary labour under piece rate system ('B' list) for deployment by the District Manager, Durg in the Depot Office for various ancillary jobs. It was further ordered that the respondents - workmen would be entitled for the wages as admissible to the 'B' list workers of the Food Corporation of India applicable to the M.P. Region. By order dated 04.01.1995 (Annexure- P-7) a

Corrigendum was issued deleting the word "regularized as departmental workmen" and the earlier order dated 25.01.1994 was rectified as under :

> " The 22 workmen as annexed in the list are reinstated as regular departmental ancillary labour in 'B' list with effect from 1/12/1983 and will be entitled for backwages as per the orders of the Hon'ble High Court based on the rates approved for ancillary labourers 'B-List' from time to time as per notifications issued by the Government. "

(5). The respondents - workmen submitted an application dated 10.08.1993 for recovery of the amount payable under the Award amounting to Rs.77,01,000/- under Section 33-C (1) of the Industrial Disputes Act, 1947 (for short " I.D. Act") read with Rule 61 (1) of the Industrial Disputes (Central) Rules, 1957 before the Regional Labour Commissioner (C), Government of India, Ministry of Labour, Jabalpur (Respondent No.1). Respondent No.1 by order dated 05.10.1994 (Annexure-P-1) held that despite ample opportunities to examine the details of calculation, the petitioner's management has not filed any calculation and accordingly directed the petitioner to deposit an amount of Rs.54,75,972/- on the basis of calculation submitted by the union of the respondents – workmen with the said office through Demand Draft in the name of Regional Labour Commissioner (Central), payable at Jabalpur within 30 days.

(6). The petitioner thereafter filed a review application submitting the revised calculation sheets that the respondent - workmen are entitled to payment of balance amount of Rs.7,15,629.84 in addition to the amount of Rs.4,89,348/- already paid. The respondent No.1 dismissed the review application and confirmed the order passed on 05.10.1994.

(7). The petitioner failed to deposit the amount as ordered by the Commissioner and as such a requisition for recovery certificate was sent to the Collector, Durg on 22.12.1994. The petitioner has thus filed this petition under Article 226/227 of the Constitution of India challenging the orders dated 05.10.1994 & 14.12.1994 (Annexure P-1 & P-2), passed by the Regional Labour Commissioner (C), Jabalpur – respondent No.1 and letter dated 22.12.1994 (Annexure-P-33)sent by him to the Collector, Durg.

(8). Mr. R.K. Gupta, learned Sr. Advocate assisted by Mr. B.P. Gupta, learned Advocate submitted that the Regional Labour Commissioner (C) - respondent No.1 does not have jurisdiction under Section 33-C (1) of the I.D. Act to pass the impugned orders. The recovery of money due to the workmen from an employer can be directed by respondent No.1 only in pursuance of a settlement or an award or under the provisions of Chapter V-A (Lay-off and Retrenchment) or Chapter V-B (Special Provisions Relating to Lay-off, Retrenchment and Closure in certain Establishments). Learned counsel submitted that the CGIT by its earlier award dated 25.05.1986, as modified by order dated 23.03.1993 by the High Court of Madhya Pradesh, Jabalpur, has directed the petitioner to reinstate and regularize the respondents - workmen with full back-wages and with all ancillary reliefs from 10.11.1984 and further interest was awarded @ 9% from the date of default till the amount is paid, but there is no award to the extent that the respondent - workmen be paid the amount on the basis of "Schedule A" employees. Learned counsel submitted that pursuant to the award passed by the CGIT and the order passed by the High Court of Madhya Pradesh the respondents - workmen were reinstated and regularized in the services of the Corporation with effect from 01.12.1983 as ancillary labourers – 'B' list for ancillary jobs vide order dated 25.01.1994

and corrigendum dated 04.01.1995. According to the petitioner, the respondents - workmen accepted the post of ancillary labour – 'B' list without any protest and joined the duties on 03.02.1994. The contract labour system under Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 has not been notified in the case of present depot at Durg and the contract system continued in the present depot. The respondents - workmen were given appointments on regular basis as ancillary labour – 'B' list and were paid defined wages and other fringe benefits subject to the periodical revision admissible to ancillary labour – 'B' list. The respondents - workmen were paid minimum wages for identical work declared by the Government and back-wages were calculated on the said basis. Learned counsel for the petitioner submitted that the exaggerated claim of Rs.54,75,972/- made under Section 33-C (1) of the I.D. Act before the respondent No.1 involves a separate dispute which cannot be decided and the amount cannot be granted by the respondent No.1. Learned counsel submitted that the petitioner calculated the amount of back-wages and submitted a calculation sheet of Rs.12,04,977.84, which was illegally rejected by the respondent No.1. Learned counsel further submitted that the question as to whether the respondents / workmen are entitled to regular appointment as 'A' list workers or ancillary 'B' list workers, pursuant to the award passed by the CGIT on 25.05.1986 and as modified by the High Court of Madhya Pradesh, Jabalpur dated 23.03.1993 is a separate dispute which has to be first adjudicated under the Industrial Disputes Act, 1947 and the respondent No.1 has exceeded his jurisdiction by directing payment of Rs.54,75,922/- without proper adjudication of this dispute by the Industrial Tribunal. Learned counsel submitted that respondent No.1 has failed to look into the calculation chart submitted by

the petitioner and directed the petitioner to deposit an amount of Rs.54,75,922/- arbitrarily without any authority of law.

(9). Learned counsel for the petitioner further submitted, by way of his application for urging additional submissions filed later on, that at that time pay scale in FCI for the workers of 'B' listed depots was pay scale of Rs.1350 i.e. 45 per day and this was granted for the first time on 01.01.1991. He submitted that in the application filed by the respondents before the Regional Labour Commissioner, Jabalpur under Section 33 –C (1) of the I.D. Act a claim was made that they were entitled for the benefits of the workers of 'A' listed depots from the year 1984 carrying minimum time pay scale of Rs.1055/- which was for the first time granted in the Madhya Pradesh region with effect from 01.01.1991. Learned counsel submitted that on the basis of the aforesaid position there was no basis or justification for the respondents to claim salary of 'A' listed depot workers from the year 1984. Learned counsel submitted that as per the system followed in Food Corporation of India, it is the status of depot which is determined as DPS, 'B' listed and 'A' listed etc. and not of the workers. Learned counsel submitted that the pay scale of 'B' listed depot workers was also revised with effect from 01.04.1995 and was upgraded at Rs.1980/- per month (Rs.66/- per day) and the respondents - workmen were also paid on the same rates. Learned counsel also submitted that inspite of the enhancement of pay scale of 'B' listed depot workers, the salary as on 01.01.1998 was at the lower side than the workers under the Direct Payment System and therefore, with a view to give benefits to the respondents - workmen with effect from 01.01.1998 the salary may be paid to them at the enhanced rate of the Direct Payment System with fringe benefits available under 'B' listed depots. Learned counsel for the petitioner prayed that the petition be allowed and the impugned orders passed and

the impugned letter issued by the Regional Labour Commissioner (C), Jabalpur – respondent No.1 be quashed accordingly.

(10). Mr. H.B. Agrawal, learned Sr. Advocate assisted by Miss Shipra Biswas, learned Advocate for the respondents / workmen in support of the impugned orders namely orders dated 05.10.1994 & 14.12.1994 (Annexure P-1 & P-2) and letter dated 22.12.1994 (Annexure-P-33), submitted that the respondents - workmen are getting the same wages what they were getting in the year 1983 when the dispute for regularization and reinstatement was raised. Learned counsel further submitted that the respondents - workmen have not been regularized as regular departmental employees who were getting regular pay scale, pursuant to the award dated 25.05.1986, passed by the CGIT, Jabalpur and subsequently confirmed with some modifications by the High Court of Madhya Pradesh, Jabalpur by order dated 23.03.1993. The respondents - workmen are still casual labourers and are paid salary on the basis of the daily wages and not on the basis of the monthly salary which is admissible and payable to the regular departmental labourers of the petitioner. The award dated 25.05.1986 as confirmed with some modifications by the High Court of Madhya Pradesh, Jabalpur by order dated 23.03.1993 is clear and unambiguous directing the petitioner to reinstate and regularize the respondents - workmen on the regular posts and not on casual daily wage labourers for ancillary work alone. Learned counsel next submitted that 'B' listed workers get almost half of the wages as payable to the 'A' listed labourers. Learned counsel submitted that there were regular ancillary labourers in FCI in Maharashtra, West Bengal and other States and were getting regular pay scale, D.A. and other benefits. 'B' listed ancillary workers in Durg depot are not regular employees but casual workers on the basis of the payment of daily wages. The

respondents - workmen accepted the appointment as 'B' listed workers under protest and made several representations for correcting the mistake and the regularized labourers cannot be paid minimum wages. Learned counsel lastly submitted that respondent No.1 has full jurisdiction under Section 33-C (1) to direct payment of back-wages pursuant to the award dated 25.05.1986 made by the CGIT and thereafter confirmed and modified to some extent by order dated 23.03.1993 of the High Court of Madhya Pradesh, Jabalpur. Thus, learned counsel for the respondents - workmen prayed for dismissal of the writ petition with costs.

(11). In the meantime, some of the respondents - workmen namely respondents 6 and 20 died and their legal representatives have been brought on record.

(12). The Food Corporation of India Workers Union through its Executive Member Shri Bimal Prasad Mishra filed an application for intervention I.A. No.4529 of 2001 praying that similar benefits be awarded to similarly placed workers who were not a party before the CGIT where the award dated 25.05.1986 was passed. This Court by order dated 27.07.2005 allowed the application for intervention subject to the condition that the intervener may not be a party in the writ petition. Mr. P.S. Koshy, learned counsel for the intervener adopted the submissions made by learned counsel for the respondents - workmen.

(13). Section 33 –C(1) of the Industrial Disputes Act,1947 reads as under :

> "**33C** - **Recovery of money due from an employer** – (1) Where *any money is due to a workman from an employer under* a settlement or *an award* or under the provisions of { Chapter VA or Chapter VB}, the workman himself or any other person authorized by him in writing in

this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue :

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer ;

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for making the application within the said period. (Emphasis Supplied)".

(14). The provisions of Section 33–C(1) of the Industrial Disputes Act, 1947 contemplates recovery of any money which is due to a workman from an employer pursuant to the settlement or an award or under the provisions of Chapter V-A or Chapter V-B. In the present case, respondent No.1 has directed the petitioner to pay the money pursuant to the CGIT award dated 25.05.1986, confirmed with some modifications by the High Court of Madhya Pradesh. The respondent No.1 has directed the petitioner to pay back-wages with all the ancillary reliefs on the basis of the pay scale payable to 'A' list workers. The award dated 25.05.1986 of the CGIT had not directed reinstatement and regularization of the workmen as 'A' list workers, but had directed reinstatement and regularization of the workmen as departmental workmen. Thus, there was a clear dispute with regard to the fact as to whether the respondents – workmen ought to have been regularized and reinstated as 'A' list workers or 'B' list ancillary workers

before directing to make payment of back-wages. Thus, the respondent No.1 has exceeded his power and jurisdiction under Section 33 –C (1) of the Industrial Disputes Act, 1947.

(15). In the present case, the facts are disputed as the petitioner – management claimed that the respondents – workmen were engaged as ancillary 'B' list workers and as such they are departmental workmen. The claim of the respondents – workmen on the other hand is that the regular departmental workmen are only those workers, who are in 'A' list workers and as such they are entitled to the pay scale and other ancillary reliefs as payable to 'A' list workers. Respondent No.1 had further accepted the calculation of the back-wages submitted by the respondents – workmen without applying his mind and the impugned letter dated 22.12.1994 – Annexure P/33 was issued. Without proper adjudication by the appropriate authority, no such relief as stated above under Section 33-C (1) of the I.D. Act pursuant to the award dated 25.05.1986 and as confirmed with some modifications by the order dated 23.03.1993 of the High Court of Madhya Pradesh, could be granted. The award provides for regularization as departmental workmen and payment of wages and other ancillary benefits accordingly. The award dated 25.05.1986 does not provide as to whether the respondents – workmen would be reinstated and regularized as 'A' list workers or 'B' list workers and consequently whether the respondents – workmen would be entitled to back-wages and other ancillary reliefs on the basis of the payment admissible to 'A' list workers or 'B' list workers.

(16). For the reasons stated above, the impugned orders dated 05.10.1994 & 14.12.1994 (Annexure P-1 & P-2), passed by the Regional Labour Commissioner (C), Jabalpur – respondent No.1 in case No.J.2 (14)/93-I.R.II and letter No.J.2(14)/93.I.R.II., dated 22.12.1994 (Annexure-

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P-33)sent by him to the Collector, Durg are hereby quashed. The petitioner may instead move the competent authority under the Industrial Disputes Act, 1947 to refer the aforesaid dispute between the parties for adjudication under the said Act.

(17). Accordingly, the petition is allowed. No order as to costs.

I agree

Sd/-
Chief Justice

Sd/-
Satish K. Agnihotri
Judge
29-09-2005

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